IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.617 OF 2006

Prakash Shantaram Raut and another ...Applicant

vs.

State of Maharashtra and another ...Respondents

Mr.P.J.Das with Mr.J.M.Puranik for the Applicant
Mr.S.R.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : DECEMBER 12,2006.

P.C.:

1. Heard Advocate for the Applicants. The Applicants are the accused in a complaint filed by the second Respondent-Credit Society under section 138 of the Negotiable Instruments Act, 1881. It is alleged in the complaint that one Ms Jayashree Raut was employed with the second Respondent as a collection agent. The allegation is that she collected a sum of Rs.96,156/- from the members of the credit society and she failed to deposit the said amount. The said Ms Jayashree Raut admitted her guilt and accepted the liability. The Applicant No.2 is the sister of the said Jayashree. According to the case of the second Respondent, it was agreed that the second Respondent will not take any legal action against the said Jayashree on condition that the Applicants will pay a sum of Rs.96,156/- to the second Respondent. According to the case of the second Respondent, a cheque was issued by the Applicants in the sum of Rs.96,156/- which was dishonoured.

2. After the evidence of the second Respondent was closed, two applications were made by the Applicants. The first Application was under section 91 of the Code of Criminal Procedure, 1973 for issuing directions to the second Respondent to produce record relating to the alleged fraud played by the said Ms Jayashree. The second Application was under section 311 of the said Code for recalling the P.W.No.2 for further cross examination. The second application was filed on the ground that if the record is produced by the second Respondent on the basis of the Application made under section 91 of the said Code, the Applicants deserve to be granted a permission for further cross examination of the P.W.No.2.

3. By separate orders dated 8th December 2005, both the Applications have been rejected.

4. The grievance of the Advocate for the Applicants is that the entire basis of the case of the second Respondent is the alleged fraud played by the said Jayashree. He submitted that though the notice to produce documents was given, even inspection of the document was not offered by the second Respondent. The learned Advocate for the Applicants submitted that in absence of the said documents, the Applicants will not be in a position to defend the complaint.

5. Notice for final disposal was issued by this Court. Though the second Respondent is represented by an Advocate, none appears for the said Respondent. The Applicants are seeking production of documents which are allegedly in the custody of the second Respondent. Whether it was necessary for the second Respondent to produce the said documents before the Trial Court or not is a question which is to be decided by the trial Court while deciding the complaint finally. It is obvious that the Applicants can always urge before the trial court that an adverse inference has to be drawn against the second Respondent for non production of the record. It is also open for the Applicants to urge that the refusal by the second Respondent to produce the record is a circumstance on the basis of which the presumption of section 139 of the said Act of 1881 may stand rebutted.

6. However, no fault can be found with the rejection of the Applications by passing the impugned order.

7. Subject to clarification made above, no case is made out for interference. Application is rejected.

JUDGE